191

Department of - AND - REVENUE

OFFICE of the Board of Revenue

STATION Chepauk Madras

Mis: No. 1483

Dated 2 12 20

	Date	Initial.
Given for copying,		
Copied		
Examined		
Signed		
Given for despatch		
Despatched	3/12/20	
Indexed		
To be destroyed on		

To whom sent

(EJECT.)

Suits (S. Kanara) - Dt. Court. Land Acquisition Case- 1 of 1920.
- Sale for combined building for Second grade school for girls + training School for Mis... Dss - Excessive Compensation. Appeal to Hr. Hon Court directed

GOVERNMENT OF MADRAS.

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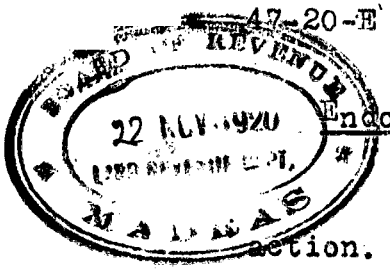
REVENUE DEPARTMENT.

Letter from the Collector of South Kanara. Reference No.C. 47-20-E 3, dated the 4th November 1920.



Endorsement No.5827.D/20-1, dated the 19th November 1920.

Transferred to the Board of Revenue for necessary action.

2. The Collector should have addressed the Board of Revenue.

(By Order)

J. B. B r o w n,

Under Secretary to Government.

To

The Board of Revenue, Land Revenue,
with copy of Collector's letter and enclosures in original.

Copy to the Collector of South Kanara.

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Forwarded to the Board of Revenue, Land Revenue

A 4412/20 — A & b Colln — L cop p 2-8-4

Suits (S. Kanara) Dt Court L.A.C. 1 of 1920 — Schl & Training

Site for a Combined building for Secondary School for Girls — Ex

Appeal to the High Court directed

Rs Ms. 1483/2-12-20. The Govt. Pleader Madras is requested to file an Appeal on behalf of the High Court against the decree of the Dt Judge, S. Kanara in L.A.C. 1 of 1920.

2. The Collr S. Kanara is requested to forward to the Govt. Pleader Madras with any further papers or information he may require. The Collr's attention is invited to Bo St Proc dt 4.3.1918. (R)

3. The Govt is requested to hand over a copy of memo of appeal when it is filed in this Office. To The Govt. Pleader Madras with records as at p 3 cf.

Collr S. Kanara

Issued 21/12

Copy of letter from the Collector of South Kanara.

Ref. C.No.47-20-E3. dated 4th November 1920.

In the Land Acquisition case concerning the land required for the construction of a combined building for a Secondary School for girls and a Training School for mistresses, the Divisional Officer, Mangalore who was appointed as the Acquisition Officer awarded compensation at the rate of Rs.4,500/- per acre.

2. The owner of the land one Mr. C.F.B. Saldanha not being satisfied with this rate. had the case referred to the District Court under Section 18 of the Land Acquisition Act. The District Judge has passed orders varying the award of the Land Acquisition Officer by enhancing the rate of compensation to Rs.6,000/- per acre.

3. The District Judge's award is based mainly on the evidence of the 2nd witness for Government who says that he would demand Rs.6,000/- per acre for his ~~aind~~ land and that the suit land is better than his own.

4. This witness does not however, give any data, for this opinion. He purchased his own land in 1916 at Rs.4,300/- per acre and he does not know of any instance of land which was worth Rs.4,300/- in 1916 being now sold at Rs.6,000/-. He says that the value of the land depends upon the purchaser's fancy. The District Judge does not seem to be justified in relying so much on the evidence of this witness.

5. One strong point in favour of the award passed by the Land Acquisition Officer is the fact that the present claimant himself sold in 1915 a portion of the suit land for Rs.4,500/- per acre. His explanation viz., that this low price was due to the fact that the vendee was his class-mate, does not seem to be convincing.

6. As regards the District Judge's remark that there is considerable increase in price of land it may be mentioned that in December last he awarded compensation at the rate of only Rs.4,000/- an acre in respect of a plot which according to the evidence of the Divisional Officer, is decidedly more valuable than the suit land from all points of view.

7. The Government Pleader, Mangalore who has been consulted by me is of opinion that the District Judge's award is not justified by the evidence in the case and that an appeal can successfully be filed in the High Court and agree with the Government Pleader. If the Government agree, the Government Pleader, Madras may be instructed to file an appeal before 6-1-1921 on which date the appeal time expires.

8. I enclose the marginally noted records:

1. Prices of the case.
2. Certified copy of order and decree in L.A.C.1/20 on the file of the District Court, South Kanara.
3. Certified copies of depositions of C. Ws. 1 to 8 on the file of the District Court, South Kanara.
4. Certified copies of depositions of C. Ws. 1 to 4 in L.A.C. 1/20 on the file of the Dt. Court.
5. Copy of award in L.A.C. 5/20 on the file of the Asst. Collector, Mangalore.
6. Copy of award in L.A.C. 1/19 on the file of the District Court.

L.A.C. No.1 of 1920. District Court, South Kanara

C.F.B.Saldanha Claimant.

Precis.

The land acquired in this case measures 2 acres -- 39640 sq ft. There was a shop and some other minor ---- improvements on the land now acquired, about the value of which there is no dispute.

The dispute relates to (1) the value given for --- the land, (2) damages on account of severance and (3) the inconvenience and loss due to the closing of the present road running through the land acquired.

As regards No.(1) the claimant claims at the rate of Rs.8000 per acre, whilst the Land Acquisition -------- Officer has awarded to him at Rs.4500 per acre. The --- District Judge has however allowed at the rate of ------- Rs.6000 per acre.

The claimant examined 6 witnesses in Court, and -- 2 on commission. The Judge has dealt in extenso with -- the evidence of all these witnesses. Out of these ----- witnesses, the 1st witness Mr. Gonsalves has produced --- the Sale Deed Exhibit B and speaks to a small plot of --- land which he purchased for his office. This plot of -- land is situated in a different locality and it is ----- clear from his evidence that he paid a heavy price as he was in need of a place for holding his office near the -- Court house. He himself admits that the site purchased by him is better than the plot acquired for business ---- purposes. After all it is a very small plot less than - of an acre and generally more price is paid for small bits of land required for trading office business or ---- other necessitous purposes.

The same remark may be made with regard to Sale -- Deed Exhibit A, which relates to a similar small plot of

ground purchased by the claimant's vakil Mr. J. H. A. Mascarenhas in the very centre of the town. The ------ price paid for such small bits cannot be taken as any -- creterion for valuing a big block of land like the suit site measuring nearly 3 acres, in a locality where there is practically no trade, but only residential buildings.

The 2nd witness speaks to a small plot of ground less than 13 cents purchased by his wife about 7 years - ago. The Sale Deed referring to this plot has not been produced, and it is clear from a perusal of his evidence that he has no personal knowledge of either value of --- buildings or sites in this town, and that his estimate - is only mere guess-work. Though this witness asserts - that the suit site would fetch 8 to 9 thousand Rs. per - acre, he admits that he does not know of any instance in which land was purchased at this rate in the whole of -- Mangalore.

C.W.3 Dr. Verghese's evidence is not very -------p28 4 material. He only says that from a sanitary point of - view, the place acquired is a very good one.

The 4th & 5th witnesses speak to offers made to - them for their lands in the vicinity of the plot acquired C.W.4 speaks at random, as is evident from his statement that the suit land would be worth Rs.10,000 per acre, -- when the claimant himself has claimed only at Rs.8000 -- per acre. He says that when an offer of Rs.16,000 was made to his house and garden, he demanded Rs.20,000, but he deposes that he does not know of any sale in this --- town either for Rs.16,000 or Rs.20,000. The evidence - of this witness is not worthy of any serious considera- tion. The evidence of C.W.5, if at all supports the -- Government valuation, for, from his evidence his site -- would be valued only at Rs.2800 per acre. b 33 & 36 4

The 6th witness is the claimant himself. In --- 915, claimant sold a portion of the suit Survey No. at

the rate of Rs.4500 per acre inclusive of improvements. Exhibit I is the Sale Deed relating to this plot. The Land Acquisition Officer has adopted this rate in ------ valuing the suit site, and in his evidence before the -- District Judge, he has made it clear that in adopting -- this rate, he collected statistics of the selling price of lands in the vicinity of the suit site and in the --- town, and he considered that when in 1915, claimant ---- himself had sold a portion of this very Survey No. for - less than Rs.4500 per acre, the rate awarded was fair. The claimant has in his evidence tried to get over ---- Exhibit I by stating that he sold the land at this rate because the vendee was his friend, and that the land --- sold was not so good as the suit site, being situated in a corner. The claimant has not chosen to examine the - vendee who lives close to his house, and no weight or -- credence can be attached to his explanation. The ----- evidence however of the Land Acquisition Officer ------- examined as 1st witness for Government will prove that - the land sold under Exhibit I is of equal importance and value to the land now acquired, both the plots being on the same level, and one the continuation of the other.

The evidence of Mr. Winterbotham C.W.7 relates -- only to the question of inconvenience caused to the ---- occupants of the adjoining bungalow by the severance of the suit site from the remaining part of the property. The evidence of the last witness examined on commission Mrs. C. Pais is not of any materia importance as she -- speaks only to an offer made by her husband some years ago for the purchase of a portion of the suit site. Her evidence is too vague. She admits that she does not -- even remember the extent which she and her husband ----- offered to buy and that she had made the offer because - she had a fancy for the place. No definite offer ----- appears to have been made. This witness admits in her

evidence that she is not aware of any one having paid --- Rs.7000 to 8000 per acre any where in the whole of ------ Mangalore within the last 5 years

The claimant has not adduced any evidence to show that any lands in the vicinity of the suit site was sold - for anything like Rs.8000 per acre now claimed by him. His evidence does not go far to prove that the rate ---- awarded by the Land Acquisition Officer was in any way -- low.

The Judge also has not given any weight to the --- claimant's evidence The Land Acquisition Officer has - given weighty reasons for awarding Rs.4500 per acre which is the highest rate so far allowed in any Land Acquisition Case in this town. The evidence of 3rd & 4th ----- witnesses examined on behalf of Government conclusively - prove that the rate allowed by the Land Acquisition ----- Officer was the highest that could have been given, and - that they purchased the lands equally if not more ------- valuable than the suit site for less than Rs.4000 per --- acre. In this connection their Sale Deeds Exhibits III & IV may be referred to, which are documents relating to transactions in the very year in which the present award was passed. A reference may also be made to Exhibit V copy of the award in another Land Acquisition Case ------ decided by the present District Judge who awarded only at Rs.4000 per acre for a site at the Bunder, which the ---- Land Acquisition Officer has deposed in his evidence, is far more valuable from every point of view than the suit site.

The District Judge in increasing the rate to ----- Rs.6000 per acre, has mainly relied on the evidence of -- 2nd witness for Government. This witness has purchased a land at some distance from the suit site in the year -- 1916 under Exhibit II. If we refer to this Sale Deed -- and his evidence, it would appear that he paid at the ---

rate of Rs.4300 per acre. Simply because he now depose that the value of the land has since 1916 gone up, and -- that he would demand now at the rate of Rs.6000 per acre for his land, and that he would also pay at the same rate for the suit site, the Judge states that the claimant is entitled to claim at that rate. The witness admits that he is not willing to part with his land for any price, -- but that if he is forced to do so, he would demand ------ Rs.6000 an acre. This sort of evidence is too vague to be taken seriously, more especially in view of the price paid by him under Exhibit II. The Judge is not -------- justified in solely relying on the evidence of this ----- witness for awarding at the rate of Rs.6000 per acre; which is unheard of in this District. The claimant has not produced any Sale Deeds nor adduced any evidence to - prove that any lands in the vicinity had at any time been sold at Rs.6000 per acre or that prices of lands have --- gone up in this town since 1915 or 1916. In the face of the evidence given by the Land Acquisition Officer and -- other respectable witnesses examined on behalf of ------ Government corroborated as they are by the Sale Deeds --- produced, and more especially in view of Exhibits I & V, the rate awarded by the District Judge is altogether ---- excessive. The evidence adduced by the claimant in no - way showed that the award of the Land Acquisition Officer was in any way wrong or caused hardship to claimant.

On the other two points raised by the claimant, -- the Judge has rightly held that he is not entitled to any amount in excess of that awarded by the Land Acquisition

A 4412/20 No 1/20 Land Acquisition

Sirts (S. Kanara) Dt. Court Appeal

Reference Excessive Compensation

FROM

Register No.

To

To Secretary

The facts of the Case are Set out in the Collrs letter and in the precis prepared by the local Govt. Pleader.

The Judge Accepts the Land Acquisition Officers' Valuation of Rs 4000 as Correct So far as it relates to Conditions that prevailed in 1915 & 1916. The Judge has allowed for an increase in prices since then And the amount to be allowed on this account he took from the Evidence of G.W. No 2. Ex V on which Govt want to rely does show that the prices have risen since 1915. The Coll and the Govt. Say that no ~~witness~~ deeds have been produced to show that as a matter of fact Lands were sold for higher prices after 1916

The Judge Said in Ex. V. This well known that prices are going up by leaps and bounds

very day in Mangalore. This doubtful whether the High Court will set aside the Dt. Judge's award and restore that of the Land Acq^n Officer which takes account of rise in prices in recent years.

This very difficult to settle prices with reference to sale deeds relating to other sites. Local conditions may be quite different.

In order whether an appeal should be filed in the High Court. As seems this site is on the way to the Golf bungalow & perhaps X has seen it.

× Govt. Clerk says.

P.26.

Ser
26/11/20

I doubt if an appeal will do any good.

L. V. Kaji

yes, I know the land.
I think an appeal should be filed
Ser
28/11/20

S

To Secretary

Draft Submitted

I.A. 2.12.20

L.
2/12

Ser
1-12-20

Govt. P. / Pub. P. 1—800—24-7-

GOVERNMENT PLEDER'S / ~~PUBLIC PROSECUTOR'S~~ OFFICE,

HIGH COURT,

No. 571

Madras, 8th December 1920.

A 4581

BOARD OF REVENUE 9 DEC 1920 LAND REVENUE DEPT. MADRAS

From

C. Madhavan Nair, Esq.,

Ag. GOVERNMENT PLEADER / ~~PUBLIC PROSECUTOR~~

Madras,

To

THE Secretary to the Board of Revenue,

Land Revenue, C h e p a u k.

SIR,

(3) p14 With reference to para 3 of Board's Proceedings No. 1483 (Miscellaneous), dated 2nd December 1920, I have the honour to forward herewith a copy of memo of appeal p20 filed to-day in the High Court against the decision in Land Acquisition Case No. 1/20 on the file of the District Court, South Kanara.

To Secretary
This may be filed with
Bpp No 1483 & 2.12.20.

I have the honour to be,
S i r,
Your most obedient servant,

C Madhavan Nair
8.12.20

Ag. Government Pleader.

M E M O R A N D U M O F A P P E A L.

In the District Court of South Kanara.

Land Acquisition Case No. 1/20.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

S. No. /20.

	In the District Court.	In the High Court.
The revenue Divisional Officer, Mangalore.	Land Acquisition Officer.	Appit.
- v s -		
1. Mr. C.F.B.Saldanha, son of A.J.Saldanha, Mangalore. ----------	1st Claimant.)	Respts.
2. Madhava Naika ---------- occupier of shop on 1" Respt's land, c/o 1" Respt.	2nd Claimant.)	

The Government Pleader, Madras, on behalf of the Appellant abovenamed begs to prefer to this Honourable Court this Memorandum of Appeal against the decision in Land Acquisition Case No. 1/20 on the file of the District Court of South Kanara, dated 3rd September 1920, for the following among other grounds:-

1. The award of the Lower Court is against law, the weight of evidence and the probabilities of the case.

2. The Lower Court having rightly discredited the evidence of the claimants8 witnesses ought not to have varied the award of the Land Acquisition Officer.

3. The Lower Court erred in allowing Rs. 6,000 per acre to the claimant.

4. The Lower Court erred in relying on the vague and unsatisfactory evidence of the 2nd witness for Government.

5. The Lower Court erred in not attaching any importance to the evidence of 1st, 3rd and 4th witnesses for Government.

6. The evidence of the witnesses for the Government and Exhibits I to V conclusively prove that the rate awarded by District Judge is excessive.

7. The reasoning in para 14 of the judgment is unsou and incorrect; the learned Judge erred in saying "it is a well-known fact that prices have risen now

(Sd) C. Madhavan Nair

Madras, 8th December 1920. Ag. Government Pleader

MEMO OF VALUATION.

Value of the appeal is the sum allowed by the lower court in addition to the amount awarded by the Land Acquisition Officer ----- Rs. 5,019

Stamp duty thereon paid is ---------- Rs. 10

N. B.- Section 8 of the Court Fees Act applies only to parties and not to Government. Please see 17 I Cases 764. So a Court Fee Stamp of Rs. 10 for aside award has been paid.